

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

THIS DOCUMENT RELATES TO:

PBM Cases

MDL No. 2804

Case No. 1:17-md-02804-DAP

Judge Dan Aaron Polster

**THE PBMS' MOTION FOR THE COURT
TO CONDUCT PROCEEDINGS ON THE RECORD**

In accordance with the Special Master Appointment Order (ECF No. 69), Federal Rules of Civil Procedure 53 and 79, and 28 U.S.C. § 753, OptumRx, Inc. and Express Scripts, Inc. (the **PBMs**) move the Court to enter an order requiring that any hearing, conference, or proceeding of any type involving the PBMs be held on the record before a court reporter.

DISCUSSION

“[A]ll proceedings . . . had in open court” must be recorded “unless the parties with the approval of the judge shall agree specifically to the contrary.” 28 U.S.C. § 753(b)(2). The law also requires a record of “such other proceedings as a judge of the court may direct or as may be required by rule or order of court or as may be requested by any party to the proceeding.” *United States v. Gallo*, 763 F.2d 1504, 1530 (6th Cir. 1985) (quoting 28 U.S.C. § 753(b)(3)). Proceedings “shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method.” 28 U.S.C. § 753(b). Section 753(b)’s requirements are “mandatory.” *Gallo*, 763 F.2d at 1530. “It is the duty of the court, *not* the attorneys, to meet the Act’s requirements.” *Id.* (emphasis in original).

When the PBMs became actively involved in this litigation, they learned that the Court had held hearings and made statements to the parties in off-the-record proceedings without a court

reporter. Other defendants filed motions requesting that proceedings be held on the record and transcribed by a court reporter. *See, e.g.*, ECF Nos. 1141; 1235; 1558; 2606; 2757; 2884; 2904; 2964. The PBMs began a similar practice of moving to have a court reporter present at proceedings before the Court. *See* ECF Nos. 5162; 5260; 5275; 5334. The Court granted the PBMs' first motion (ECF No. 5163) and denied their later motions as moot. *See* Nov. 30, 2023 Non-Document Order (denying motion as moot because a court reporter had been arranged); Dec. 20, 2023 Non-Document Order (denying motion as moot without explanation); Feb. 28, 2024 Non-Document Order (denying motion as moot because a court reporter had been arranged).

For months, the PBMs have not filed similar motions ahead of proceedings before the Court, and those proceedings have in each case included a court reporter who created a transcript of the proceeding. Following a May 15, 2025, hearing, which was held on the record, this Court ordered the parties to appear for a hearing on July 9, 2025. ECF No. 6152 at 15. On July 9, the PBMs participated in the hearing under the impression that the proceeding would again be held on the record with a court reporter present.

Shortly after the hearing concluded, OptumRx filed a request for an expedited transcript of the conference. ECF No. 6220. In response, the Court modified the docket entry for the transcript request to read "CANCELLED/FILING ERROR" and to note that "[n]o transcript [is] available" because the proceedings were "held off the record." *See id.* Separately, a Court Reporter Supervisor from the court contacted OptumRx's counsel regarding the transcript request, stating in an email that the "proceedings were held informally without a court reporter present" and that "no record was made and no transcript is available." *See* Exhibit A.

The PBMs wish to avoid another situation in which they are under the mistaken impression that a conference is on the record and is being recorded. By filing this motion, they seek a standing

order requiring that any proceedings before the Court involving the PBMs be held on the record before a court reporter.

Dated: July 28, 2025

Respectfully submitted,

/s/ Brian D. Boone

Brian D. Boone

ALSTON & BIRD LLP

1120 South Tryon Street, Suite 300

Charlotte, NC 28203

(704) 444-1000

brian.boone@alston.com

D. Andrew Hatchett

ALSTON & BIRD LLP

1201 West Peachtree Street NW, Suite 4900

Atlanta, GA 30309

(404) 881-7000

andrew.hatchett@alston.com

Attorneys for OptumRx, Inc.

/s/ Jonathan G. Cooper

Michael J. Lyle

Jonathan G. Cooper

QUINN EMANUEL URQUHART &

SULLIVAN, LLP

1300 I St. NW, Suite 900

Washington, DC 20005

Tel.: (202) 538-8000

mikelyle@quinnemanuel.com

jonathancooper@quinnemanuel.com

Attorneys for Defendant Express Scripts, Inc.